



West Virginia E-Filing Notice

CC-19-2019-P-136

Judge: Debra McLaughlin

To: Curtis Capehart
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Nancy Singleton Case v. Corporation of Harpers Ferry

CC-19-2019-P-136

The following motion was FILED on 10/17/2019 1:59:27 PM

Notice Date: 10/17/2019 1:59:27 PM

Laura Storm

CLERK OF THE CIRCUIT

Jefferson

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**NANCY SINGLETON CASE, and
DEBORAH A. MCGEE**

Individual Contestors Below, Petitioners,

v.

**Case No.: 19-2019-P-136
(Honorable Debra McLaughlin)**

**HARDWICK SMITH JOHNSON,
CHARLOTTE WARD THOMPSON,
CHRISTIAN PECHUEKONIS,
MARJORIE FLINN YOST,
BARBARA HUMES,
JAY PREMACK, and
CORPORATION OF HARPERS FERRY,**

Individual Contestees Below, Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Mac Warner, Secretary of State of the State of West Virginia, in his official capacity (the “Secretary”), by and through counsel, respectfully moves for any necessary leave to submit a brief as *amicus curiae* in support of the relief sought by Petitioners, Nancy Singleton Case and Deborah A. McGee. The Secretary has interest in the matter presented in this case in his capacity as the state’s chief election officer.

The brief of the Secretary, as the State’s chief election official, presents desirable, relevant information for the Court’s consideration. The Secretary seeks to ensure uniform application of West Virginia election laws and to promote the franchise of eligible voters.

For these reasons, this motion should be granted. In the alternative, if the Court is unwilling to accept the Secretary’s brief as *amicus curiae*, then the Secretary moves to intervene as an

additional party, consistent with West Virginia Rule of Civil Procedure 2(b), as the statutes at issue in this action are “administered by” the Secretary as a “state governmental officer.”

Respectfully submitted,

MAC WARNER, SECRETARY OF STATE
OF THE STATE OF WEST VIRGINIA

By Counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart

Curtis R. A. Capehart

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*Counsel for Mac Warner, Secretary of State of the
State of West Virginia*

DATE: October 17, 2019

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BARBARA HUMES,
JAY PREMACK, and
CORPORATION OF HARPERS FERRY,**

Individual Contestees Below, Respondents.

CERTIFICATE OF SERVICE

I caused a true copy of the foregoing “*Motion for Leave to File Brief as Amicus Curiae*” to be served on the following counsel electronically via the West Virginia E-Filing system and by depositing in the United States Postal Service a copy this 17th day of October:

Gregory A. Bailey, Esq.
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Christian Pechuekonis, Marjorie Flinn Yost,
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**PATRICK MORRISEY
ATTORNEY GENERAL**

/s/ Curtis R. A. Capehart
Curtis R. A. Capehart

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Individual Contestees Below, Respondents.

BRIEF AS AMICUS CURIAE SUPPORTING PETITIONER

Mac Warner, Secretary of State of the State of West Virginia, in his official capacity (the “Secretary”), by and through counsel, respectfully submits this brief as amicus curiae in support of the relief sought by Petitioners, Nancy Singleton Case and Deborah A. McGee. The Secretary, in his capacity as the State’s chief election officer, has interest in the matters presented in this case.

The Petition for Appeal (the “Petition”) relates the factual circumstances relevant to the Court’s consideration as more fully developed in the Petitioners’ Appendix. In short, due to a physical home address issue that stemmed from registering to vote via the Division of Motor Vehicles and that agency’s identification of town of residence, properly registered voters purportedly resident within the town of Harpers Ferry, West Virginia, were listed within a precinct outside the municipality and were required to complete provisional ballots for a Harpers Ferry municipal election – ballots that the Harpers Ferry Board of Canvassers decided not to count and

that the Harpers Ferry Town Council later voted to leave uncounted following an election contest on the matter.

The Secretary's principal concern in bringing this brief is the uniform application of the election Code throughout the state. Since 2004, the Office of the Secretary of State (the "Secretary's Office") has maintained the "single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state" that serves as "the single system for storing and managing the official list of registered voters throughout the state" and "the official voter registration list for conducting **all elections** in the state." *See* W. Va. Code § 3-2-4a(a) (emphasis added). This statute's creation of a unitary database maintained by the Secretary's Office streamlined voter registration, replacing the prior regime of separate voter registration books for county and municipal voting and, consequently, obviating holdings interpreting the requirements of the old system. Under the current system, there is no registration in municipalities compared to state or county registrations – a single registration in the statewide system renders a citizen duly registered for any elections in which the citizen is otherwise eligible to vote.¹ In other words, a voter is duly registered to vote in their home municipality if they are duly registered in the single state voter registration system. Any interpretation or holding that seeks to inject back into this system any distinction regarding municipal versus state or county registration is counter to the language of the Code and would create confusion where none presently exists.

Regarding the issue of technical errors and oversights, the Code strongly favors counting ballots. Section 3-1-41(e) directs that voters not be disenfranchised for technical errors, omissions, or oversights "if it can reasonably be ascertained that the challenged voter was entitled to vote."

¹ Other eligibility requirements, such as time of registration prior to an election, would still apply.

The allegedly incorrect address of a voter's home is clearly a technical issue, particularly where the entry of a voter's municipal precinct into the system was the result of another state agency's recordkeeping apparatus, and a citizen's knowledge or lack of knowledge of the error prior to an election is immaterial under the Code. Consistent with this statute, the Secretary's office has and will continue to advise that, on a question of residency alone, the provisional ballots of voters that can be reasonably discerned to live within a municipality would be valid votes. If this Court finds that the homes of the citizens whose votes are at issue here were truly within the bounds of Harpers Ferry at all relevant times, then the proper course consistent with the Code and its application statewide would be to correct for this technical oversight by ordering that the ballots of these citizens be counted.

Finally, the Secretary notes that this matter, as with all matters involving elections, is one where time is of the essence. The election at issue in this matter occurred on June 11, 2019, and its outcome will not be truly decided until this matter is concluded.

The Secretary seeks to emphasize that a ruling against Petitioners would be inconsistent with relevant statutes and that the position of Respondents, if adopted by this Court, would present inconsistent interpretation and enforcement of relevant statutes. For these reasons, the Petition should be granted.

Respectfully submitted,

MAC WARNER, SECRETARY OF STATE
OF THE STATE OF WEST VIRGINIA

By Counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart

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I caused a true copy of the foregoing “*Brief as Amicus Curiae Supporting Petitioner*” to be served on the following counsel electronically via the West Virginia E-Filing system and by depositing in the United States Postal Service a copy this 17th day of October:

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Johnson, Charlotte Ward Thompson,
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**PATRICK MORRISEY
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/s/ Curtis R. A. Capehart
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